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10/664,865

09/22/2003

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EXAMINER

MILLER, SAMANTHA A

ART UNIT

PAPER NUMBER

3749

NOTIFICATION DATE

DELIVERY MODE

09/15/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|------------------------------|---------------------------------------|---|--|
| Office Action Summary | Application No. 10/664,865 | Applicant(s) LE GALL, CHARLES | |
| | Examiner SAMANTHA A. MILLER | Art Unit 3749 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed on 6/28/2010 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 3 states the "second sub-wall" is formed from a thermally insulating material, however this seems to be a typo as stated in the specification and claim 1 only the "first sub-wall" is taught in this invention as being made of a thermally insulation material. The appropriate correction is required.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 1; applicant has added "and said first space and said second space are **without any ribs** therein". The first and second spaces not having any ribs is not in the original specification or claims making it

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new matter. The appropriate correction is required, for the purpose of this rejection the new matter will be addressed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over BRETSCHNEIDER (6,149,254) in view of BALTES (4,869,872).

BRETSCHNEIDER teaches:

1. A container (2) comprising walls (4, Fig.1) defining an inside zone (3) suitable for housing at least one piece of equipment (equipments, assemblies, etc.), at least one of said walls (4) being constituted by at least three sub-walls (5, 6, 7) spaced apart from one another in such a manner as to define at least first and second air circulation spaces (8, 9), first (9) and second (8) air circulation spaces being separated without any communication therebetween (by 6) and a sub-wall (6) sealingly separates said first and second circulation spaces so that air inside said container (18) does not contact air outside said container (19) (Fig.1), wherein said first space (9) communicating with the outside of said container via at least two outside openings (33 on both sides) and said first space and said second space are without any ribs therein (Figs.6, 8, 10, 12, and 18-20; show embodiments that do not have any ribs in the first or second spaces

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therein), and said second space (8) communicating said inside zone via at least two openings (21 on both sides), a first one of said sub-walls (5) facing the outside of said container, a second one of said sub-walls (7) facing said inside zone, and a third one of said sub-walls (6) being interposed between said first and second sub-wall.

2. The third sub-wall (6, or functional wall) is constituted by a material for enabling heat to be transferred between said first and second spaces (col.1 ll.26-34).

4. A first air circulator device (35) arranged to suck in air from outside said container via at least a first one of said outside openings (33, Fig.1), to cause said outside air to circulate in said first space (9), and then to expel said outside air through at least a second one of said outside openings (36, col.5 ll.2-5).

5. A portion of said air circulator device (35) is installed substantially in said second outside opening (openings at 36; where lamellas connect 35 to ambient air).

7. At least one second air circulator device (20) arranged to suck air in from said inside zone via at least one of said first inside openings (21, Fig.1), to cause said inside air to circulate in said second space (8), and then to expel said inside air through at least a second one of said inside openings (top of 3, Fig.1).

8. A portion at least of said second air circulator device (20) is installed substantially in said second inside opening (top of 3).

9. The second air circulator device (20) comprises at least one fan (col.4 ll.64-65).

10. A control device arranged to control the operation of said first air circulator device (101) and/or of said second air circulator device based on the heat quantity, (col.4 ll.64-67)

11. The control device is arranged to control the operation of said first air circulator device (35) and/or of said second air circulator device (20) in such a manner as to regulate the temperature in said inside zone (col.4 ll.64-67).

12. The direction of air circulation in said first space (9) is substantially opposite to the direction of air circulation in said second space (8) (Fig.1).

13. Each of at least three walls (4) of said container comprise are constituted by said at least three sub-walls (5,6,7) (Fig.1).

14. The three walls (4) communicate with one another in such a manner as to constitute a single-shaped element (Fig.1).

15. One of the three walls (4) is a top wall (along 36, Fig.1).

16. A telephone system including a container (2) housing telephone equipment (capable, col.1 ll.1-10).

BRETSCHNEIDER teaches the claims as discussed above, however BRETSCHNEIDER does not teach the first sub-wall made of thermally insulating material.

BALTES teaches:

1. A first sub-wall (9) is formed from a thermally insulating material (col.4 ll.33-36)
3. The (first or second) sub-wall (9 or 22) is constituted by a thermally insulating material (col.4 ll.31-36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the material of BALTES in view of the cabinet of BRETSCHNEIDER in order to prevent the operating personnel from suffering burns (BALTES, col.4 ll.48-50).

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over BRETSCHNEIDER (6,149,254) in view of BALTES (4,869,872) in further view of SPINAZZOIA (2001/0029163).

BRETSCHNEIDER in view of BALTES teaches the claims as discussed above, however BRETSCHNEIDER in view of BALTES does not teach the first air circulator device comprises at least one fan which is positioned outside the first space.

SPINAZZOIA teaches:

6. The first air circulator device (24b) which is positioned outside the first space (Fig.5).

17. The first air circulator device (24b) is arranged in the outside opening outside the first space (Fig.5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the air circulator devices of BRETSCHNEIDER in view of BALTES in view of the location of the air circulator device of SPINAZZOIA in order to increase the efficiency of cooling the cabinet by removing the heat of the fan from the cooling space.

Response to Arguments

Applicant's arguments filed 6/28/2010 have been fully considered but they are not persuasive.

Applicant contends the 35 U.S.C. 112, first paragraph rejection made to claim 3 because the first sub-wall is made of thermally insulating material and because the third sub-wall is preferably constituted by the material for providing effective heat exchange between the first and second. However, claim 3 is rejected because it states the "**second** sub-wall" is formed from a thermally insulating material. Applicant has failed to show where in the specification it says the "**second** sub-wall is formed from a thermally insulating material" the rejection is deemed proper.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the material of BALTES in view of the cabinet of BRETSCHNEIDER in order to prevent the operating personnel from suffering burns (BALTES, col.4 ll.48-50).

Applicant contends that in claim 16 BRETSCHNEIDER does not teach a telephone system. However, claim 16 does not claim a telephone system. Claim 14 states, "A telephone system including a container housing telephone equipment". In response to applicant's argument that BRETSCHNEIDER does not teach a telephone system, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. BRETSCHNEIDER teaches the container (2) houses electrical and electronic equipment and component which would make the container (2) capable of housing telephone equipment which is considered the intended use of the container, col.1 ll.1-10.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR '1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory

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action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272-9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller
Examiner
Art Unit 3749
9/11/2010

/Steven B. McAllister/
Supervisory Patent Examiner, Art Unit 3749

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